

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEWLY WEDS FOODS, INC.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act, ("CAA"), 42 U.S.C. § 7401 et seq., against Defendant, Newly Weds Foods, Inc., ("Newly Weds" or "Defendant") for civil penalties for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric

Ozone Protection"), 42 U.S.C. §§ 7671 - 7671q, at its facilities located in Chicago, Illinois; Watertown, Massachusetts; Bethlehem, Pennsylvania; Cleveland, Tennessee; Horn Lake, Mississippi; Springdale, Arkansas; Gerald, Missouri; and Modesto, California.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and pursuant to 28 U.S.C. §§ 1331, 1345, 1355.

3. Venue is proper in the Northern District of Illinois, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), and 1395(a), because it is the judicial district (i) of Newly Weds' principal place of business, (ii) where some of the events giving rise to the claims alleged in this Complaint occurred, and (iii) where some of the violations of the CAA alleged in this Complaint occurred.

NOTICE AND AUTHORITY

4. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the Environmental Protection Agency ("EPA") pursuant to 28 U.S.C. §§ 516, and 519, and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

5. Notice of the commencement of this action has been given to the air pollution control agency for each state where Defendant's facilities are located. 42 U.S.C. § 7413(b).

DEFENDANT

6. Defendant Newly Weds Foods, Inc., is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

7. At times relevant to this action, Defendant owned and operated facilities in Chicago, Illinois; Watertown, Massachusetts; Bethlehem, Pennsylvania; Cleveland, Tennessee; Horn Lake,

Mississippi; Springdale, Arkansas; Gerald, Missouri; and Modesto, California, that engaged in the production of bread crumbs, batter, and other bakery goods for distribution throughout the United States.

8. Defendant is, or at times relevant to this matter was, the owner and operator of the facilities listed above, that engaged in the production of bakery ingredients and goods, coatings, seasonings, and capsicums, and distribution throughout the United States and other parts of the world.

9. Defendant is a “person,” as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the CAA, 42 U.S.C. § 7413.

DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in the CAA, or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Complaint, the following definitions apply:

- a. “Appliance” means a device as defined at 40 C.F.R. § 82.152.
- b. “Defendant” means Newly Weds Foods, Inc.
- c. “Defendant’s U.S. facilities” or “Facilities” means those facilities owned and operated by Defendant, described in Paragraph 7, above.
- d. “Facility” means a discrete parcel of real property or such a parcel improved by Defendant’s buildings, factory, plant, premises, or other thing, at which Defendant operates its baking/bakery business, containing at least one IPR Appliance.

e. "Industrial Process Refrigeration Appliance" or "IPR" means any appliance that is directly linked to the manufacturing or baking process and that contains more than fifty pounds of Refrigerant.

f. "Refrigerant" means a Class I or a Class II substance as defined in 40 C.F.R.

§ 82.3, or a blend of Class I or Class II substances.

STATUTORY AND REGULATORY PROVISIONS

11. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection") is designed to control emissions of certain substances that destroy the stratospheric ozone layer, known as Class I and Class II ozone-depleting substances.

12. Section 608 of Subchapter VI, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program") requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

13. The EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

14. Section 608 of the CAA states, "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment." 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

15. The Subpart F Regulations contain leak repair requirements for industrial process equipment containing greater than fifty pounds of refrigerant and impose record-keeping requirements for all owners or operators of appliances containing more than fifty pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

16. Section 113(a)(3) of the CAA, authorizes the Administrator to commence a civil action against any person in federal district court where such person has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(a)(3)(C).

17. Section 113(b)(2) of the CAA, authorizes the Administrator to bring a civil action against any person in a federal district court where such person has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(b)(2).

18. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004) EPA may seek civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004 and up to \$32,500 per day for each violation occurring after March 15, 2004.

GENERAL ALLEGATIONS COMMON TO ALL FACILITIES

19. At times relative to this Complaint Newly Weds has been the owner or operator of

bakery facilities located in Chicago, Illinois; Watertown, Massachusetts; Bethlehem, Pennsylvania; Cleveland, Tennessee; Horn Lake, Mississippi; Springdale, Arkansas; Gerald, Missouri; and Modesto, California. Newly Weds is therefore, an "owner or operator" of industrial dough mixers, spice cooling units, blending area units, chillers and spiral coolers, staling units, and other appliances which constitute "industrial process refrigeration" equipment as described in 40 C.F.R. § 82.152. As such, Defendant has been the "owner or operator" of IPRs which are "Appliances" within the meaning of 42 U.S.C. § 7671(1) and 40 C.F.R. § 82.152(a).

20. At all times relevant to this Complaint, Defendant employed Refrigerant in its IPRs at its Facilities.

21. At all times relevant to this Complaint, the full charge of Refrigerant required for each of the affected IPRs at each of Defendant's U.S. facilities has been more than fifty pounds.

22. Pursuant to 40 C.F.R. § 82.156(i)(2), a Facility with Industrial Process Refrigeration Appliances containing more than fifty pounds of Refrigerant must keep the leak rate of its equipment below a 35% annualized leak rate. Where the annualized leak rate from an IPR exceeds 35%, the Facility must repair the leak within thirty (30) days (120 days if the facility cannot get a necessary part or if an industrial process shutdown, as defined by the Subpart F Regulations, is needed to repair the Appliance). 40 C.F.R. § 82.156(i)(2).

23. Pursuant to 40 C.F.R. § 82.156(i)(3), if leak repair is attempted, the Facility must then perform an initial verification leak check on the subject Appliance. A follow-up verification leak test must be performed within thirty (30) days. 40 C.F.R. § 82.156(i)(3).

24. If leak repair has not been successfully completed within thirty (30) days, the Facility

must retire or retrofit the Appliance. 40 C.F.R. § 82.156(i)(3)(ii). Within thirty days following the discovery that the annualized leak rate exceeds 35% or within thirty days following a failed follow-up verification leak test, the Facility must develop a one-year plan and complete the plan within one year of the plan's date. 40 C.F.R. § 82.156(i)(6). The Facility then must retire or retrofit the Appliance within the time set forth in the retrofit/retire plan. *Id.*

25. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), if leak repair is attempted but the follow-up verification test reveals that the leak rate is more than 35%, the facility must notify the EPA within thirty (30) days, in accordance with 40 C.F.R. § 82.166(n).

26. Pursuant to 40 C.F.R. § 82.166(k), the owner/operator of IPRs containing fifty pounds or more of Refrigerant must maintain records detailing the date and type of service, as well as the amount of refrigerant added to the equipment.

27. All records required to be maintained pursuant to 40 C.F.R. § 82.166, must be kept for a minimum of three years. 40 C.F.R. § 82.166(m).

28. Pursuant to 40 C.F.R. § 82.166(n), the owner/operator of IPRs must report to the EPA, inter alia, the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that has been completed.

29. Pursuant to 42 U.S.C. § 7414, the Administrator may require an owner or operator of an emissions source, who the Administrator believes has information relevant to an investigation, to provide, inter alia, records and other information as the Administrator may reasonably require.

FIRST CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(2)] (Failure to Repair Leak)

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. The annualized leak rates of Class I and Class II substances from one or more Industrial Process Refrigeration Appliance at one or more of Defendant's U.S. facilities exceeded an annualized leak rate of 35% on one or more occasions and Defendant failed within 30 days to repair the leak, without otherwise developing a one-year plan for retrofit or retirement of one or more of such leaking appliances, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(2) during the period from January 1, 1999 to the date of the filing of this Complaint.

32. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2), at each such leaking IPR at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

33. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

SECOND CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)] (Failure to Conduct Initial Verification Leak Test)

34. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

35. Defendant failed to perform one or more initial verification leak tests as required by

Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) on one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

36. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), at each such leaking IPR at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

37. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

THIRD CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)]
(Failure to Conduct Follow-up Verification Leak Test)

38. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

39. Defendant failed to perform one or more follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) on one or more IPRs at one or more of Defendant's U.S. facilities, during the period from January 1, 1999 to the date of the filing of this Complaint.

40. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

41. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief

should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

FOURTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(ii)]
(Failure to Retrofit or Retire Appliances within one year)

42. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

43. Defendant failed to retrofit or retire leaking IPRs, or otherwise comply with the requirements of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii) within one year after a follow-up verification test indicated that repairs to the IPRs were not successfully completed with respect to one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

44. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

45. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

FIFTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(6)]
(Failure to Develop Retrofit or Retirement Plan)

46. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

47. Defendant failed to develop a written, one-year retrofit or retirement plan for leaking

IPRs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

48. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

49. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

SIXTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(iii)]
(Failure to Notify EPA of Failed Follow-Up Verification)

50. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

51. Defendant failed to notify EPA that its IPRs failed one or more follow-up verification tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) with respect to one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

52. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

53. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief

should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

SEVENTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(k)]
(Failure to Maintain Service Records)

54. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

55. Defendant failed to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities performed on its IPRs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) with respect to one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

56. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

57. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

EIGHTH CLAIM FOR RELIEF

[VIOLATIONS OF THE CAA AND 40 C.F.R. § 82.166(m)]
(Failure to Retain Records)

58. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

59. Defendant failed to maintain records required by Section 608 of the CAA, 42 U.S.C.

§ 7671g, and 40 C.F.R. § 82.166(k) for a minimum of three years at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

60. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

61. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

NINTH CLAIM FOR RELIEF

[VIOLATION OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(n)]
(Failure to Report the Leak Rate of Appliances)

62. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

63. Defendant failed to maintain on-site and to report to EPA information, records and reports detailing the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leak, and the date and type of repair work performed as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n) with respect to one or more IPRs at one or more of Defendant's U.S. facilities during the period from January 1, 1999 to the date of the filing of this Complaint.

64. For each violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n) at each such leaking IPR appliance at Defendant's U.S. facilities, Defendant is liable for civil penalties of not more \$27,500 per day for each violation occurring on or before March

15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004.

65. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413, permanent injunctive relief should be entered requiring, among other things, that Defendant retrofit or retire each such leaking commercial refrigeration system at Defendant's U.S. facilities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Enjoin Defendant from operating Defendant's U.S. facilities except in accordance with the Clean Air Act, 42 U.S.C. §§7401-7671q, and regulations promulgated thereafter, 40 C.F.R.

Part 82, Subpart F;

2. Assess civil penalties against the Defendant of not more than \$27,500 per violation for violations occurring on or before March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004;

3. Grant the United States injunctive relief as requested in this Complaint;

4. Grant the United States an award for its costs and expenses incurred in this action; and

5. Grant the United States such other and further relief as this Court deems appropriate.

Respectfully Submitted,

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